

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 2:20CR26
(Judge KleeH)

JOSHUA LEE RUTHERFORD,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 172],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On January 26, 2021, the Defendant, Joshua Lee Rutherford ("Rutherford"), appeared before United States Magistrate Judge Michael J. Aloia and moved for permission to enter a plea of **GUILTY** to Count Seven of the Indictment, charging him with Possession with Intent to Distribute at Least 40 Grams of Fentanyl - Aiding and Abetting, in violation of Title 18, United States Code, Section 2 and Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B)(vi). Rutherford stated that he understood that the magistrate judge is not a United States District Judge, and Rutherford consented to pleading before the magistrate judge. This Court referred Rutherford's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to

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whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Rutherford's statements during the plea hearing, and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Rutherford was competent to enter a plea, that the plea was freely and voluntarily given, that Rutherford was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [Dkt. No. 172] finding a factual basis for the plea and recommending that this Court accept Rutherford's plea of guilty to Count Seven of the Indictment.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Rutherford nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [Dkt. No. 172], provisionally **ACCEPTS** Rutherford's guilty plea,

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and **ADJUDGES** him **GUILTY** of the crime charged in Count Seven of the Indictment.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Rutherford, and prepare a presentence investigation report for the Court;

2. The Government and Rutherford shall each provide their narrative descriptions of the offense to the Probation Officer by **March 10, 2021**;

3. The presentence investigation report shall be disclosed to Rutherford, his counsel, and the Government on or before **May 10, 2021**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence investigation report on or before **May 24, 2021**;

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5. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **June 7, 2021**; and

6. Counsel may file any written sentencing memorandum or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **June 21, 2021**.

The magistrate judge remanded Defendant to the custody of the U.S. Marshals Service.

The Court will conduct the **Sentencing Hearing** for Rutherford on **July 9, 2021**, at **1:30 p.m.**, at the **Elkins, West Virginia** point of holding court. If counsel anticipates having multiple witnesses or an otherwise lengthy sentencing hearing, please notify the Judge's chamber staff so that an adequate amount of time can be scheduled.

It is so **ORDERED**.

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The Clerk is directed to transmit copies of this Order to
counsel of record and all appropriate agencies.

DATED: February 22, 2021

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE